

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Louis B. Egenberger,  
Appellant,

v.

Cass County Board of Equalization,  
Appellee.

Case Nos: 17R 0026 & 18R 0012

Decision and Order Affirming the Decisions  
of the Cass County Board of Equalization

**For the Appellant:**

Louis B. Egenberger,  
Pro Se

**For the Appellee:**

S. Colin Palm,  
Cass County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. PROCEDURAL HISTORY**

The Subject Property is a residential parcel located at 32301 East Lake Park Drive, Unit 79A, Cass County, Nebraska. The parcel ID of the Subject Property is 130397145. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6. The improvements on the Subject Property are assessed as Improvements on Leased Land and valued as a separate parcel that is not the subject of these appeals.<sup>1</sup>

The Cass County Assessor determined that the assessed value of the Subject Property was \$22,819<sup>2</sup> for tax year 2017, and \$55,000<sup>3</sup> for tax year 2018. Louis B. Egenberger (the Taxpayer) protested each of these assessments to the Cass County Board of Equalization (the County Board) and requested an assessed valuation of \$18,535<sup>4</sup> for tax year 2017 and \$14,788<sup>5</sup> for tax year 2018. The County Board determined that the taxable value of the Subject Property for each tax year 2017 and 2018 was \$55,000.<sup>6</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 10, 2019. Prior

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<sup>1</sup> See, Exhibit 9:152-153.

<sup>2</sup> Exhibit 1.

<sup>3</sup> *Id.*

<sup>4</sup> Exhibit 2.

<sup>5</sup> *Id.* \$9,982 for land and \$4,806 for improvements.

<sup>6</sup> Exhibit 1 & Exhibit 2.

to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. At the hearing, Exhibits 1-4, 6, 8-9, 15, 21-22, 29, 31-40, and parts of 26 were received in evidence.

## II. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>7</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>8</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>9</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>12</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>13</sup>

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<sup>7</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>8</sup> *Brenner* at 283, 811.

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>11</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>12</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>13</sup> *Botdorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>14</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge....” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>15</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>16</sup>

### III. APPLICABLE LAW

#### A. Valuation

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>17</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>18</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>19</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>20</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>21</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>22</sup>

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<sup>14</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>18</sup> *Id.*

<sup>19</sup> *Omaha Country Club* at 180, 829.

<sup>20</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>21</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>22</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

## B. Equalization

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>23</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>24</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>25</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>26</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>27</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>28</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>29</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”<sup>30</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>31</sup>

## IV. FINDINGS OF FACT & ANALYSIS

Louis Egenberger testified on behalf of the Taxpayer. Dana Long, a licensed Appraiser and Deputy County Assessor, testified on behalf of the County Board. Only the taxable value of the land component of the Subject Property is at issue in these appeals.

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<sup>23</sup> *Neb. Const.*, Art. VIII, §1.

<sup>24</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>25</sup> *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>26</sup> *Cabela's Inc.*

<sup>27</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>28</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>29</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>30</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>31</sup> *Id.* at 673, 94 N.W.2d at 50.

The Subject Property is the underlying ground of Unit 79A and an undivided 1/116<sup>th</sup> interest in the common elements of the North Lake Condominium Association (the Association).<sup>32</sup> The Subject Property was sold by the Association to the Taxpayer and the deed was recorded on March 6, 2017.<sup>33</sup> The sale price was \$55,000. The Subject Property was one of 116 lake properties (previously leased lots only) sold by the Association to the individual owners of the improvements.<sup>34</sup> Each lot sold for \$55,000. Louis Egenberger testified that the sale price in each transaction included \$14,000 for Association Reserves.

The Association bought the lake and the surrounding lots from NEBCO Inc. on December 22, 2015 for \$5,000,000.<sup>35</sup> There were no appraisals of any of the lake properties in evidence. The Taxpayer provided no sales of comparable properties other than the sales of the other 115 lots by the Association.

The Subject Property, as well as 115 other comparable lake properties were purchased in 2016 and 2017.<sup>36</sup> The parties agree that each of these transactions involved a purchase price of \$55,000 for the land.<sup>37</sup> The Taxpayer asserts that the purchase price should be discounted by \$14,000, the amount he believed that the seller, the Association, put into reserves for the Association. Louis Egenberger testified that each purchaser was a member of the Association and that the reserve amount was required by the Association as a condition of the sale.

There is no evidence that any purchaser of any of the 116 lake properties purchased a lake property for any amount less than \$55,000. In effect, in order to obtain ownership of each property, the Buyer was required to pay \$55,000 as a condition of the sale. There is also no other sufficient evidence to conclude that the County Board determination of value was arbitrary or unreasonable.

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<sup>32</sup> North Lake is a condominium organized and existing under the laws of the State of Nebraska pursuant to the Declaration filed January 27, 2016, at Book 83, Page 708 and the First Amendment to Declaration of Condominium For North Lake Condominium dated February 11, 2016 and filed February 12, 2016 in Book 84 Page 708, Records of Cass County, Nebraska., See, Exhibit 36:209.

<sup>33</sup> The conveyance was to Kim Egenberger, wife of Louis Egenberger, the date of the Corporate Warranty Deed was December 14, 2016. Exhibit 36:208-210.

<sup>34</sup> Prior to this transaction, the homeowners leased the lots from North Lake and the home on each lot was considered an improvement on leased land.

<sup>35</sup> Exhibit 22:11.

<sup>36</sup> The deeds were recorded in 2016 or 2017. See Exhibit 36.

<sup>37</sup> See i.e., Exhibit 36:208.

## V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the decisions of the County Board should be affirmed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Cass County Board of Equalization determining the taxable value of the Subject Property for tax years 2017 and 2018 are affirmed.<sup>38</sup>
2. The taxable value of the Subject Property for each tax year 2017 and 2018 is \$55,000.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Cass County Treasurer and the Cass County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2017 and 2018.
7. This Decision and Order is effective for purposes of appeal on September 3, 2020<sup>39</sup>

Signed and Sealed: September 3, 2020

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

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<sup>38</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the protest proceedings. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

<sup>39</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.